

1 Michele R. Stafford, Esq. (SBN 172509)  
2 Matthew P. Minser, Esq. (SBN 296344)  
3 SALTZMAN & JOHNSON LAW CORPORATION  
4 44 Montgomery Street, Suite 2110  
5 San Francisco, California 94104  
Telephone: (415) 882-7900  
Facsimile: (415) 882-9287  
Email: [mstafford@sjlawcorp.com](mailto:mstafford@sjlawcorp.com)  
Email: [mminser@sjlawcorp.com](mailto:mminser@sjlawcorp.com)

6 Attorneys for Plaintiffs, Operating Engineers  
7 Health and Welfare Trust Fund for Northern California, et al.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' HEALTH AND  
WELFARE TRUST FUND FOR NORTHERN  
CALIFORNIA, et al.,

Plaintiffs,

v.

3B ENTERPRISES, LLC., a California Limited  
Liability Company; and PATRICK BENEDICT, an  
individual,

Defendants.

Case No. 3:18-cv-02833-JSW

**JUDGMENT PURSUANT TO  
STIPULATION**

IT IS HEREBY STIPULATED and AGREED (the "Stipulation") by and between the parties hereto that Judgment shall be entered in the within action in favor of Plaintiffs Operating Engineers' Health and Welfare Trust Fund for Northern California, et al. ("Plaintiffs" or "Trust Funds") and against Defendant 3B Enterprises, LLC, a California Limited Liability Company, and Defendant Patrick Benedict, an individual, as follows:

1. Defendant 3B Enterprises, LLC is signatory to and bound by the terms of a Collective Bargaining Agreement(s) ("Bargaining Agreement") with the Plaintiff Union ("Union"). The Bargaining Agreement is still in full force and effect.

2. Patrick Benedict confirms that he is the President of and a Manager of Defendant 3B Enterprises, LLC, and is authorized to enter into this Stipulation on behalf of 3B Enterprises, LLC.

1       3. Patrick Benedict (“Guarantor”) also confirms that he is personally guaranteeing the  
 2 amounts due herein. Defendant Patrick Benedict and 3B Enterprises, LLC (collectively “Defendants”)  
 3 specifically consent to the Court’s jurisdiction, as well as the use of a Magistrate Judge for all  
 4 proceedings, including entry of judgment herein. Defendants further confirm that all successors in  
 5 interest, assignees, and affiliated entities (including, but not limited to, parent or other controlling  
 6 companies), and any companies with which either Defendant joins or merges, if any, shall also be bound  
 7 by the terms of this Stipulation as Guarantors. This shall include any additional entities in which  
 8 Guarantor is an officer, owner or possesses any controlling ownership interest and specifically includes  
 9 “3 Brothers Construction and Rental, Inc., a California Corporation” of which Patrick Benedict is CEO,  
 10 Secretary, and a named Director. All such entities shall specifically consent to the Court’s jurisdiction,  
 11 the use of a Magistrate Judge for all proceedings, and all other terms herein, in writing, at the time of  
 12 any assignment, affiliation or purchase.

13       4. Defendants are currently indebted to the Trust Funds as follows:

<b>Work Month</b>	<b>Unpaid Contributions</b>	<b>20% Liquidated Damages</b>	<b>10% Interest (thru 6/13/18)</b>	<b>Subtotals</b>
October 2017	\$46,381.43	\$9,276.29	\$2,542.00	\$58,199.72
November 2017	\$46,158.12	\$9,231.62	\$2,150.50	\$57,540.24
December 2017	\$34,953.95	\$6,990.79	\$1,331.62	\$43,276.36
January 2018	\$37,515.33	\$8,649.51	\$1,110.24	\$47,275.08
February 2018	\$44,489.99	\$10,283.92	\$1,098.70	\$55,872.61
March 2018	\$39,246.14	\$7,849.23	\$526.75	\$47,622.12
April 2018	\$49,249.56	\$9,849.91	\$256.31	\$59,355.78
<b>Subtotals:</b>	<b>\$297,994.52</b>	<b>\$62,131.27</b>	<b>\$8,892.62</b>	<b>\$369,141.91</b>
Unpaid Contributions, Liquidated Damages and Interest (10/17-4/18; breakdown above):				\$369,141.91
10% Liquidated Damages on Prior Late-Paid Contributions (11/16, 1/17, 3/17, 6/17, 9/17):				\$8,899.87
10% Interest on Prior Late-Paid Contributions (11/16, 1/17, 3/17, 6/17, 9/17):				\$405.07
Attorneys’ Fees (3/1/18 through 6/12/18):				\$2,149.00
Costs (3/1/18 through 6/12/18):				\$400.00
<i>Credit for Check Received June 15, 2018:</i>				-\$248,744.77*
<b>JUDGMENT AMOUNT:</b>				<b>\$132,251.08</b>

27       \* As this check was received at Plaintiffs’ Counsel’s office on June 15, 2018, Plaintiffs do not yet have  
 28 bank clearance of the check. If for any reason this check fails to clear the bank, the total amount of this  
 check: \$248,744.77 shall be added to and shall become part of this Judgment.

## **REQUIREMENTS UNDER THE TERMS OF THIS STIPULATION**

5. **Notice requirements** pursuant to the terms of this Stipulation are as follows:

a) Notices to Defendants: Patrick Benedict, 3B Enterprises, LLC, PO Box 2372 Rancho Cordova, CA 95741; email: [Patrick@3be.com](mailto:Patrick@3be.com)

b) Notices to Plaintiffs: Michele R. Stafford, Saltzman & Johnson Law Corp., 44 Montgomery Street, #2110, San Francisco, CA 94104; email: [mstafford@sjlawcorp.com](mailto:mstafford@sjlawcorp.com), copy to [compliance@sjlawcorp.com](mailto:compliance@sjlawcorp.com)

6. The requirements pursuant to the terms of this Stipulation are as follows:

a) **Monthly Payments:** Defendants shall conditionally pay the amount of \$61,219.94, representing all of the above amounts, less liquidated damages in the amount of \$71,031.14.

i) Payments in the amount of **\$5,383.00 per month** shall begin on July 15, 2018, and continue on or before the 15<sup>th</sup> (fifteenth) day of each month thereafter **for a period of twelve (12) months**. Plaintiffs may require that Defendants pay electronically by ACH/wire transfer, or by cashier's check.

ii) Defendants shall have the right to increase the monthly payments at any time and there is no penalty for prepayment.

iii) Payments shall be applied first to interest, at the rate of 10% per annum in accordance with the Bargaining Agreement(s) and Trust Agreements. Interest shall begin to accrue on June 14, 2018.

b) **Contributions:** Beginning with contributions due for hours worked by Defendants' employees during the month of May 2018, and for every month thereafter until this Judgment is satisfied, Defendants shall remain current in reporting and payment of contributions due to Plaintiffs under the terms of the Collective Bargaining Agreement(s).

c) **Job Report:** Beginning with the month of June 2018, and for every month thereafter, Defendants shall fully disclose all jobs on which they are working by providing Plaintiffs with fully completed job reports on the form attached hereto as *Exhibit A*. Upon request by Plaintiffs, Defendants shall also provide Plaintiffs with copies of Certified Payroll Reports.

d) **Audit:** Should the Trust Funds request an audit of Defendants' payroll records pursuant to the requirements of the Bargaining Agreement(s) and/or Trust Agreements, Defendants must

contact the auditor within seven days of receiving notice, and must schedule the audit as requested. Defendants must fully comply with the audit by keeping the scheduled appointment for the audit and making all documentation requested by the auditor available for inspection.

i) In the event that amounts are found due to Plaintiffs as a result of the audit, Plaintiffs shall send a copy of the audit report and written demand for payment to Defendants. In the event that the audit findings are not contested, payment in full shall be delivered to Michele R. Stafford at the address provided above within ten days of the date of the demand letter.

ii) In the event that Defendants dispute the audit findings, Defendants must provide the dispute in writing, with all supporting documentation, within ten days of the date of the demand. Defendants shall be notified as to whether revisions will be made to the audit. If revisions are not made, payment in full of the amount requested in the above-described demand letter, plus additional interest, will be immediately due. If revisions are made, payment in full of the revised amount shall be immediately due. Plaintiffs shall send a revised written demand for payment to Defendants. Payment in full shall be delivered to Michele R. Stafford at the address provided above within ten days of the date of the demand letter.

iii) If Defendants are unable to make payment in full, Defendants may submit a request to add the amounts found due to this Stipulation. If the Stipulation is so revised, Defendants shall execute the Amended Judgment or Amendment to Judgment within ten days of receipt. Failure to execute the revised agreement shall constitute a default of the terms herein.

iv) Failure by Defendants to fully comply with the audit, and/or submit either payment in full or a request to add the amounts due to this Judgment within ten days of receipt shall constitute a default of the obligations under this agreement. All amounts found due on audit shall immediately become part of this Judgment.

e) **Fees:** Defendants shall pay all additional attorneys' fees and costs incurred through Satisfaction of Judgment, whether or not a default occurs.

7. In summary, Defendants shall deliver the following payments and documents to Plaintiffs, at the following locations, on or before the following delivery deadlines, until this Stipulation

1 has been fully satisfied:

<u>Required Submissions</u>	<u>Delivery deadlines</u> <sup>†</sup>	<u>Delivery locations</u>
<b>Stipulated payments in the amount of \$5,383.00 payable to <i>Operating Engineers Trust Funds</i></b>	15 <sup>th</sup> day of each month (7/15/18-6/15/19)	Michele R. Stafford Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104
<b>Current contribution reports and payments</b> payable to <i>Operating Engineers Trust Funds</i>	15 <sup>th</sup> day of each month (beginning 7/15/18, for 6/18 hours)	Michele R. Stafford Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104;  Plus copies to: <a href="mailto:compliance@sjlawcorp.com">compliance@sjlawcorp.com</a> (subject: "3B Enterprises");  Operating Engineers Trust Funds P.O. Box 3157 Hayward, CA 94540-3157
<b>Completed job reports</b> (form attached as Exhibit A to Stipulation)  <b>and Certified Payroll</b> (if requested)	15 <sup>th</sup> day of each month (beginning 7/15/18, for 6/18 hours)	<a href="mailto:compliance@sjlawcorp.com">compliance@sjlawcorp.com</a> (subject: "3B Enterprises") or Michele R. Stafford Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104

19 8. Failure to comply with any of the above terms, including submitting a payment that does  
20 not clear the bank, shall constitute a default of the obligations under this Stipulation.

#### **DEFAULTS UNDER THE TERMS OF THIS STIPULATION**

21 9. If default occurs, Plaintiffs shall make a written demand to Defendants to cure said  
22 default ***within seven (7) days of the date of the notice from Plaintiffs***. In the event default is not cured  
23 within the required time frame, all amounts remaining due hereunder (after application of principal  
24 payments made, if any) shall be due and payable on demand by Plaintiffs. These amounts shall include  
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28 <sup>†</sup> If the Stipulation has not been fully satisfied by 6/15/19, all monthly submission requirements shall continue  
until all amounts have been paid and a Satisfaction of Judgment has been filed with the Court.

1 any conditionally waived liquidated damages, additional (current) contributions/liquidated  
2 damages/interest, and additional attorney's fees and costs incurred herein.

3 10. Any unpaid or late-paid contributions, together with 20% liquidated damages and 10%  
4 per annum interest, shall become part of this Judgment. Plaintiffs reserve all rights available to collect  
5 any contributions and related amounts not included herein. This includes, but is not limited to, any  
6 amounts due pursuant to employee timecards or paystubs, by audit, or other means. Should Defendants  
7 fail to submit a report for any month, contributions shall be estimated pursuant to Trust Fund policy.  
8 Defendants specifically waive the defense of the doctrine *res judicata* as to any such additional amounts  
9 determined as due.

10 11. A Writ of Execution may be obtained without further notice, in the amount of the unpaid  
11 balance plus any additional amounts due under the terms herein. Such Writ of Execution may be  
12 obtained solely upon declaration by a duly authorized representative of Plaintiffs setting forth the  
13 balance due as of the date of default.

14 **MISCELLANEOUS PROVISIONS**

15 12. The above requirements remains in full force and effect regardless of whether or not  
16 Defendants have ongoing work, whether Defendants' account with the Trust Funds is active, or whether  
17 Defendants are signatory to a Collective Bargaining Agreement with the Union. If, for any reason,  
18 Defendants have no work to report during a given month, Defendants shall submit the job report form  
19 (Exhibit A attached hereto) indicating that there are no current jobs. If Defendants have no contributions  
20 to report, Defendants shall submit the applicable contribution report stating "no employees."

21 13. Payments made by joint check shall be endorsed on behalf of Defendants prior to  
22 submission, and may be applied toward Defendants' monthly stipulated payment, provided that the  
23 issuer of the joint check is not requesting a release in exchange for the payment. Joint checks for which a  
24 release is requested may not be applied toward Defendants' monthly stipulated payment, but shall be  
25 deducted from the total balance owed under this Stipulation, provided the payment is for contributions  
26 included in this Stipulation.

27 14. Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise Defendants as  
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1 to the final amount due, including additional interest, any current contributions and related amounts, and  
2 all additional attorneys' fees and costs incurred by Plaintiffs, whether or not Defendants default herein.  
3 Any additional amounts due shall be paid in full with the final stipulated payment due on June 15, 2019.

4 15. The conditional waiver of liquidated damages shall be presented to the Board of Trustees  
5 for consideration only after all amounts due under the terms of this Stipulation are paid in full, and  
6 Defendants' account is otherwise current. If the waiver is granted, a Satisfaction of Judgment will be  
7 filed with the Court once all payments have cleared the bank. If the waiver is not granted, the liquidated  
8 damages will be immediately due. The waiver may be granted with further conditions, such as paying  
9 timely and remaining current for an additional period of time.

10 16. Defendants waive any notice of Entry of Judgment or of any Request for a Writ of  
11 Execution, and expressly waive all rights to stay of execution and appeal.

12 17. Any failure on the part of Plaintiffs to take any action as provided herein in the event of  
13 any breach of the provisions of this Stipulation shall not be deemed a waiver of any subsequent breach.

14 18. Defendants have represented that they do not intend to file for Bankruptcy protection. In  
15 the event that Defendants file for Bankruptcy protection, Defendants specifically agree that the amounts  
16 due hereunder, which are employee benefits and related sums, shall not be dischargeable. Defendants  
17 agree to reaffirm this debt, and will not request that the debt be discharged.

18 19. Should any provisions of this Stipulation be declared or determined by any court of  
19 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of  
20 the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or  
21 invalid part, term, or provisions shall be deemed not to be part of this Stipulation.

22 20. This Stipulation is limited to the agreement between the parties with respect to the unpaid  
23 and delinquent contributions and related sums enumerated herein, owed by Defendants to Plaintiffs.  
24 This Stipulation does not in any manner relate to withdrawal liability claims, if any. Defendants  
25 acknowledge that Plaintiffs expressly reserve their right to pursue withdrawal liability claims, if any,  
26 against Defendants and control group members, as provided by Plaintiffs' Plan documents, Trust  
27 Agreements incorporated into their Bargaining Agreements, and applicable laws and regulations.

1       21. This Stipulation contains all of the terms agreed to by the parties and no other agreements  
2 have been made. Any changes to this Stipulation shall be effective only if made in writing and signed by  
3 all parties hereto.

4       22. This Stipulation may be executed in any number of counterparts and by facsimile, each of  
5 which shall be deemed an original and all of which shall constitute the same instrument.

6       23. Defendants represent and warrant that they have had the opportunity to be or have been  
7 represented by counsel of their own choosing in connection with entering this Stipulation under the  
8 terms and conditions set forth herein, that they have read this Stipulation with care and are fully aware  
9 of and represent that they enter into this Stipulation voluntarily and without duress.

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24. The parties agree that the Court shall retain jurisdiction of this matter until this Judgment is satisfied.

DATED: June , 2018

**3B ENTERPRISES, LLC., A CALIFORNIA  
LIMITED LIABILITY COMPANY**

DATED: June , 2018

## PATRICK BENEDICT

DATED: June 25, 2018

# SALTZMAN & JOHNSON LAW CORPORATION

DATED: June , 2018

# OPERATING ENGINEERS HEALTH AND WELFARE TRUST FUND FOR NOR. CAL., ET AL.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall retain jurisdiction over this matter.

UNITED STATES DISTRICT JUDGE

1           24. The parties agree that the Court shall retain jurisdiction of this matter until this Judgment  
2 is satisfied.

3 DATED: June , 2018

**3B ENTERPRISES, LLC., A CALIFORNIA  
LIMITED LIABILITY COMPANY**

5 By:

6           Patrick Benedict, President and Manager of  
7           Defendant 3B Enterprises, LLC

8           **PATRICK BENEDICT**

9 By:

10           Patrick Benedict, individual Defendant and  
11           Guarantor

12 DATED: June , 2018

**SALTZMAN & JOHNSON LAW  
CORPORATION**

13 By:

14           Matthew P. Minser, Attorneys for Plaintiffs,  
15           Operating Engineers Health and Welfare Trust  
16           Fund for Nor. Cal., et al.

17 DATED: June , 2018

**OPERATING ENGINEERS HEALTH AND  
WELFARE TRUST FUND FOR NOR. CAL.,  
ET AL.**

18 By:

Sonya Brown

19           Sonya Brown  
20           Fringe Benefits Director for Operating Engineers  
21           Local 3 Trust Funds

22 IT IS SO ORDERED.

23 IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall retain  
24 jurisdiction over this matter.

25 DATED: July 6 , 2018

  
26           **UNITED STATES DISTRICT JUDGE**

**Exhibit A: JOB REPORT FORM****Completed Forms Due by the last business day of each month**by email to [compliance@sjlawcorp.com](mailto:compliance@sjlawcorp.com) (subject line: *3B Enterprises, LLC*) , or  
delivered to Saltzman & Johnson, 44 Montgomery St., Ste. 2110, San Francisco, CA 94104**Employer: 3B ENTERPRISES, LLC****Report for the month of \_\_\_\_\_, 20\_\_ Submitted by: \_\_\_\_\_**

<b>Project Name:</b>			<b>Public or Private?</b> (Circle one)
<b>Project Address:</b>			
<b>General Contractor:</b>			
<b>General Contractor Address:</b>			
<b>General Contractor Phone #:</b>		<b>Project Manager Name:</b>	
<b>Project Manager Phone #:</b>		<b>Project Manager email address:</b>	
<b>Contract #:</b>		<b>Contract Date:</b>	
<b>Total Contract Value:</b>			
<b>Work Start Date:</b>		<b>Work Completion Date:</b>	
<b>Project Bond #:</b>		<b>Surety:</b>	

<b>Project Name:</b>			<b>Public or Private?</b> (Circle one)
<b>Project Address:</b>			
<b>General Contractor:</b>			
<b>General Contractor Address:</b>			
<b>General Contractor Phone #:</b>		<b>Project Manager Name:</b>	
<b>Project Manager Phone #:</b>		<b>Project Manager email address:</b>	
<b>Contract #:</b>		<b>Contract Date:</b>	
<b>Total Contract Value:</b>			
<b>Work Start Date:</b>		<b>Work Completion Date:</b>	
<b>Project Bond #:</b>		<b>Surety:</b>	

**\*\*\*Attach additional sheets as necessary\*\*\***